

FLATHEAD COUNTY PLANNING AND ZONING
ADDENDUM TO ZONING VARIANCE REPORT # FZV-09-08
NODDING ONION LLC
FEBRUARY 9, 2010

The Board of Adjustment reviewed this application request on February 2, 2010. Board members Gina Klempel, Gary Krueger, Scott Hollinger, Mark Hash and Craig Wagner were present.

Staff presented the report and explained the reasoning behind conditionally approving the variance request. Staff's recommendation was based upon findings in the staff report indicating the applicant's wholesale variance request did not meet the variance review criteria, but that a variance to a portion of the paving requirement was able to meet the variance criteria and made sense in light of certain conditions beyond the applicant's control. Staff explained the recommended approval of the variance still required the applicant to pave the areas recommended by staff, primarily the parking and circulation surrounding the mini-storage units and duplex building (Alternative B). A wholesale variance to the paving requirement on the subject property was not able to meet all eight review criteria and was therefore not supported by the Planning Office. Staff also summarized comment from both MDEQ and the Road and Bridge Department, as well as written public comment from Montana Venture Partners, LLC requesting the Board deny the variance request.

Gary Krueger asked staff a number of questions regarding the original Conditional Use Permit approved in October 2009, and whether or not the paving requirement applied to all of the site or only the new construction. Staff explained the CUP was for the tract of land in its entirety, and that the paving requirement was a function of the zoning district itself, not simply the Conditional Use Permit.

The applicant, Zach Andrews, made a presentation following staff requesting the Board grant a variance to all paving on site as originally requested. He specifically discussed the limitations of stormwater capacity onsite, as approved by DEQ. The applicant stated that paving would require a rewrite by DEQ, and also argued the cost of paving would far exceed the cost of the actual buildings. He explained the areas around the mini-storage and duplex building had been dust-mitigated using shale application, and that paving would impact the retention basins as originally approved by DEQ.

The Board opened public comment; no one spoke in favor or against the variance request. Staff clarified the recommended paving requirement would not be applied over the stormwater retention basin adjacent to the shop, and discussed input received from Jarrod Mohr at DEQ that engineering the site to accommodate run-off from paving was definitely possible, and may or may not require a rewrite in the future.

Discussion ensued regarding the feasibility of paving around the mini-storage buildings. The Board questioned the rationale behind requiring paving on the site; Gary Krueger suggested paving not be required around the mini-storage but be applied to 100 feet off both access points to the north (off Snowline Lane) and from the east (off Demersville Road). Staff reminded the Board that variances, unlike CUPs, were not up for negotiation; the circulation and parking areas throughout the site were required to be paved according to the zoning regulations. Taking the amount of paving determined by staff's recommendation and applying it elsewhere on the site would not meet the variance review criteria and could be considered arbitrary. Board discussion ensued regarding the paving location and likelihood of a DEQ rewrite in the future.

Mark Hash asked whether or not the condition could be worded to accommodate staff's recommendation but also allow the applicant to investigate alternatives if the Department of Environmental Quality determined stormwater *could not* be accommodated onsite as a result of the paving requirement. Discussion continued. Staff agreed this was possible and worked with the Board to craft wording that was acceptable to accommodate this measure. Additional comment was heard from Zach and Cork Andrews with regard to the feasibility of pavement around the mini-storage units. Gary Krueger stated he did not feel paving around the mini-storage

units was reasonable and that the paving was better suited along the shared access easement where more dust was likely created. The Board continued to discuss the paving requirement in light of increased impervious surface and industrial uses. Gina Klempel mentioned shale application was an excellent alternative. Board discussion concluded.

1. Craig Wagner motioned and Gina Klempel seconded to adopt staff report FZV-09-08 as Findings of Fact and approve the variance request subject to two (2) conditions; the condition recommended by staff and the new condition crafted by the Board and planning staff as follows:

Condition 2: *If it is determined by the Montana Department of Environmental Quality (MDEQ) that the site design Alternative B is not feasible, the applicant may reapply for reconsideration of this variance.*

Discussion ensued between the applicant and the Board regarding the cost of paving and the staff report. Mark Hash stated he understood both sides of the situation and felt comfortable with the resolution because it gave the applicant the opportunity to come back if paving was unable to be mitigated, as established by DEQ. The applicant had additional questions regarding what was actually being proposed; Scott Hollinger addressed the questions by the applicant. Discussion between the Board and the applicant was then closed. Gary Krueger made additional comment regarding the hardship being the existing buildings.

- **Craig Wagner called for the question; Board members approved unanimously.**
- **On roll call vote the original motion to adopt staff report as Findings of Fact and approve the variance request subject to two conditions passed 3 to 2.**

SUMMARY OF FINDINGS

1. Strict compliance with the regulations would limit the reasonable use of portions of the property because the use of heavy equipment in some areas has the potential to degrade paving faster than typical vehicle traffic. These limitations would be addressed by granting a variance with the condition that those areas not subject to heavy equipment be paved (**Alternative B**).
2. Strict compliance with the regulations would deprive the applicant of rights enjoyed by adjacent properties zoned I-2 but would not deprive the applicant of rights enjoyed by similar properties zoned I-1H and located in the Lower Side Zoning District. Requiring the applicant pave according to **Alternative B** would address inconsistencies between heavy industrial equipment use on the subject property compared to neighboring properties, but would fulfill the paving requirement as fulfilled by similar properties zoned I-1H with similar light industrial uses located in the same zoning district.
3. The applicant does not have complete control over the access easements along the west and south property boundaries, and these shared easements could pose a hardship to the applicant if required to pave the entire site. The applicant has full ownership and control of the paved access onto Snowline Lane and the parking and circulation areas surrounding the mini-storage units and duplex building, therefore no hardship exists with regard to ownership or control were a variance granted and the applicant required to pave this area in accordance with **Alternative B**.
4. The applicant states the hardship in paving around the mini-storage and duplex buildings results from topography onsite and potential drainage complications that may result from paving these areas. However, this does not appear to be a significant topographic hardship because the areas recommended paved in **Alternative B** could be engineered to address the

modest change in topography and to manage stormwater onsite.

5. The paving requirement is somewhat peculiar to the property because adjacent properties to the south and west share access easements with the subject property but are zoned for heavy industrial uses which do not require paving. If a variance were granted, **Alternative B** would require areas of the subject property that do not share access easements with properties zoned for heavy industrial uses be paved according to the regulations because these areas are not peculiar to the property when compared to other properties zoned I-1H.
6. The hardship was not created by the applicant because the mini-storage units and duplex existed at the time the property was purchased, and the use of heavy equipment is tied to uses permitted within the I-1H zoning district itself.
7. The hardship is not solely economic because the heavy equipment utilized by the applicant and neighboring property owners would create maintenance issues were pavement applied in areas around the shop buildings and along shared access easements utilized by neighboring properties zoned I-2 Heavy Industrial.
8. The applicant's variance request as it pertains to paving around the mini-storage and duplex building is based on economic hardship and the applicant's belief that pavement would be impossible given the existing topography and potential cost of engineering and re-review. This aspect of the variance request not meeting the above criteria could be addressed by granting the variance and requiring the applicant pave according to **Alternative B** recommended by staff.
9. The granting of the variance would not adversely impact neighboring properties or the public because the applicant has proposed alternatives to paving that include dust mitigation measures, and the overall aesthetics of the property would not change significantly from what is currently in place.
10. The applicant has requested the maximum variance possible to alleviate hardship on the property because a reasonable alternative to no paving exists. However, this criteria could be met by granting a variance conditioned to require pavement as recommended by staff in **Alternative B**, which would be the minimum variance necessary to alleviate the hardship.
11. The granting of the variance as requested by the applicant (**Alternative A**) would confer a special privilege that is denied other similar properties because many of the tracts zoned I-1H in the Lower Side zoning district are paved according to the requirements of the zoning regulations. However, the granting of a variance conditioned to require the applicant pave only a portion of the property (**Alternative B**) would not confer special privilege because the applicant would be required to pave the areas not utilized by or shared with heavy equipment/heavy industrial uses, that are similar in use to other properties located in the Lower Side zoning district, zoned I-1H and currently paved.

SUMMARY OF CONDITIONS

1. The applicant shall pave the internal circulation and parking areas surrounding the two mini-storage units and duplex building, as required by Section 3.28.050(1)(D), up to the existing paved approach onto Snowline Lane as recommended by staff and exhibited in Figure 3 of this report.
2. If it is determined by the Montana Department of Environmental Quality (MDEQ) that the site design Alternative B is not feasible, the applicant may reapply for reconsideration of this variance.